

IN THE UNITED STATES DISTRICT COURT  
FOR THE WESTERN DISTRICT OF TEXAS  
WACO DIVISION

JENAM TECH, LLC

\* April 27, 2021

\*

VS.

\* CIVIL ACTION NO. W-20-CV-453

\*

GOOGLE LLC

\*

BEFORE THE HONORABLE ALAN D ALBRIGHT  
MOTION HEARING (via Zoom)

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Proceedings recorded by mechanical stenography, transcript  
produced by computer-aided transcription.

09:31 1 (April 27, 2021, 9:31 a.m.)

09:31 2 THE COURT: Good morning, everyone.

09:31 3 DEPUTY CLERK: Motion hearing in Civil Action W-20-CV-453,  
09:31 4 styled Jenam Tech LLC versus Google LLC.

09:31 5 THE COURT: I think I heard Suzanne announce the case, but  
09:32 6 I'm not sure.

09:32 7 If I could hear announcements from counsel for plaintiff  
09:32 8 and then counsel for defendants. Whoever's going to be  
09:32 9 speaking would be most helpful so I know -- I can write down  
09:32 10 and know who's going to be chatting.

09:32 11 MR. DAHLGREN: Good morning, Your Honor. My name is Derek  
09:32 12 Dahlgren from the Devlin Law Firm. I'll be speaking on behalf  
09:32 13 of plaintiff.

09:32 14 THE COURT: Mr. Dahlgren, welcome back.

09:32 15 MR. DAHLGREN: Thank you.

09:32 16 THE COURT: I always enjoy hearing from you.

09:32 17 MR. JONES: Good morning, Your Honor. This is Mike Jones  
09:32 18 representing Google. Appearing for Google at this hearing will  
09:32 19 be Mr. Matthew Werdegarr and Ms. Rylee Kercher Olm, and Ms. Olm  
09:32 20 will be providing the argument for Google. Thank you, Your  
09:32 21 Honor.

09:32 22 THE COURT: Welcome, everyone. Happy to hear the argument  
09:32 23 this morning.

09:32 24 MS. OLM: Thank you, Your Honor. Should I go ahead and  
09:32 25 proceed with the motion to transfer argument?

09:32 1 THE COURT: One of you needs to. So please.

09:33 2 MS. OLM: Okay. Rylee Kercher Olm on behalf of defendant  
09:33 3 Google LLC. Today I will be discussing Google's motion to  
09:33 4 transfer this action to the Northern District of California.

09:33 5 This patent infringement dispute is about Google's QUIC  
09:33 6 protocol, an internet protocol that was designed and developed  
09:33 7 largely in Google's headquarters in the Northern District of  
09:33 8 California. Because Jenam does not dispute that this case  
09:33 9 could have been brought in the Northern District of California,  
09:33 10 the question for this Court is whether the Northern District of  
09:33 11 California is clearly a more convenient venue than the Western  
09:33 12 District of Texas based on the four private and four public  
09:33 13 interest factors.

09:33 14 Your Honor, in this case there are five factors that weigh  
09:33 15 in favor of transfer, and the remaining three are neutral.  
09:33 16 There are no factors that weigh against transfer, because the  
09:33 17 parties in this case have no relevant connection to the Western  
09:33 18 District of Texas.

09:33 19 I'd like to briefly discuss each factor, starting with the  
09:33 20 four private interest factors, if that's all right with Your  
09:34 21 Honor.

09:34 22 THE COURT: Yes, ma'am. Of course.

09:34 23 MS. OLM: Thank you.

09:34 24 So I'd like to start by going over the factors related to  
09:34 25 party and third-party witnesses, since the convenience of the

witness is the most important part of the transfer analysis.

So beginning with the availability of the compulsory process to ensure the attendance of witnesses, Google has identified four nonparty witnesses with relevant knowledge who reside in Northern California and for whom there's no indication that these witnesses would be willing to testify in the Western District of Texas. Jenam has also indicated that all four of these individuals have relevant testimony.

First, there's Jana Iyengar, the co-editor of the Internet Engineering Task Force's version of the QUIC protocol. Now, Jenam cites to 27 different versions of IETF's QUIC in its infringement contentions, and Dr. Iyengar is a co-editor on every single version. And Dr. Iyengar lives in Northern California and has declared that he's likely unwilling to testify in the Western District of Texas.

Second, there's Ryan Hamilton who's a co-author of the IETF's initial specification for QUIC who also resides in Northern California. Now, Mr. Hamilton was also a technical lead on Google's QUIC team. And he was on Google's QUIC team for ten years and assisted with the deploying QUIC in Chrome, Google server and other Google products, so he's likely to have relevant testimony.

Third and fourth are Jim Roskind and Charles Krasic who are two former Google employees who helped develop the Google QUIC protocol in its earliest stages, and they now reside in

09:35 1 Northern California as well.

09:35 2 And these engineers are going to be of particular  
09:35 3 importance in this case because the timing of Google's  
09:35 4 development of the QUIC protocol is at issue, because we're  
09:35 5 contesting Jenam's asserted priority date.

09:35 6 And Jenam has also alleged that the earliest version of  
09:36 7 QUIC contained the infringing functionalities. And since these  
09:36 8 individuals worked on QUIC at that time, Jenam concedes they  
09:36 9 have relevant testimony.

09:36 10 Now, to be clear, Your Honor, these aren't random  
09:36 11 cherry-picked witnesses. These are early developers who had  
09:36 12 lead roles in QUIC's development and whose work Jenam itself  
09:36 13 relies on in its infringement contentions. And Google would be  
09:36 14 prejudiced if these witnesses could not testify live.

09:36 15 Now, while there are four nonparty witnesses in the  
09:36 16 Northern District of California who are likely unwilling to  
09:36 17 testify, there are no third-party witnesses with relevant  
09:36 18 knowledge known to be within the Western District of Texas.

09:36 19 As this Court and the Federal Circuit have repeatedly  
09:36 20 held, this factor weighs heavily in favor of transfer where  
09:36 21 more third-party witnesses reside within the transferee venue  
09:36 22 than within the transferor venue.

09:36 23 Now, Jenam does allege that there's a single nonparty  
09:36 24 witness within the State of Texas though outside the Western  
09:36 25 District of Texas. And that person is Patrick Caldwell who

09:37 1 prosecuted the patents-in-suit. But Jenam does not claim that  
09:37 2 he's unwilling to testify in the Northern District of  
09:37 3 California, nor could Jenam so reasonably claim.

09:37 4 As Jenam's long-time patent counsel who's been involved in  
09:37 5 this litigation as well, Mr. Caldwell is not an unwilling  
09:37 6 witness and thus he has no impact on this factor. Further, the  
09:37 7 other attorney who assisted with prosecuting the  
09:37 8 patents-in-suit, Kevin Zilka, he resides in Northern  
09:37 9 California. So in sum, this factor weighs heavily in favor of  
09:37 10 transfer.

09:37 11 Turning to the second factor, the cost of attendance for  
09:37 12 willing witnesses. Now, in addition to the nonparty witnesses  
09:37 13 in Northern California who we just discussed, Google has  
09:37 14 identified several current employees in Northern California  
09:37 15 with relevant testimony. Notably in June 2020, the operative  
09:37 16 point in time, half of the engineers on Google's QUIC team were  
09:38 17 located in the Northern District of California.

09:38 18 Although some of those team members were recently  
09:38 19 reassigned to other teams, these engineers who were working on  
09:38 20 QUIC for years still have relevant knowledge about the  
09:38 21 deployment and functionality of Google's QUIC protocol, and  
09:38 22 they're still located in Northern California. In fact, about  
09:38 23 40 percent of current Google employees that are or were  
09:38 24 recently on Google's QUIC team are in the Northern District of  
09:38 25 California.

09:38 1 For instance, Google's technical lead for the QUIC  
09:38 2 protocol is located in Northern California, and he also works  
09:38 3 with the Internet Engineering Task Force on developing a  
09:38 4 standardized version of QUIC. And he's responsible for  
09:38 5 maintaining the materials at chromium.org/quic which is a  
09:38 6 website that Jenam relies on in its infringement contentions.

09:38 7 There is also a senior person associated with Jenam who's  
09:38 8 located in Northern California and who was involved in the  
09:38 9 prosecution of the patents-in-suit, drafting of infringement  
09:39 10 notices and licensing of the patents.

09:39 11 Jenam cannot identify any relevant witnesses in the  
09:39 12 Western District of Texas, so Jenam resorts in its briefing to  
09:39 13 identifying witnesses outside of the Western District of Texas,  
09:39 14 ignoring that pursuant to the case law it is improper to  
09:39 15 consider Texas' central location in the absence of witnesses  
09:39 16 within plaintiff's preferred venue.

09:39 17 Jenam also misconstrues the 100-mile rule. For instance,  
09:39 18 the inventor of the patents-in-suit, Robert Morris, is located  
09:39 19 in Georgia, 900 miles from the Western District of Texas. And  
09:39 20 thus he's going to have to travel a significant distance no  
09:39 21 matter where he testifies.

09:39 22 Also, more importantly, Mr. Morris has indicated that he  
09:39 23 would prefer to testify remotely regardless, and that he would  
09:39 24 most likely be unwilling to testify live in either forum. So  
09:39 25 he is not a willing witness and his location does not impact

09:39 1 this factor. Thus, this factor heavily favors transfer.

09:40 2 Turning to the third private interest factor, the relative  
09:40 3 ease of access to sources of proof. Google will have the bulk  
09:40 4 of relevant documents, and the source code and technical  
09:40 5 documents related to Google's QUIC protocol are created and  
09:40 6 maintained in Northern California and Massachusetts. This  
09:40 7 includes Google's QUIC team employees' local copies of  
09:40 8 electronic documents and hard-copy documents. And QUIC  
09:40 9 documents stored electronically will also be more readily  
09:40 10 accessible from the Northern District of California.

09:40 11 There are also several third parties who are located in  
09:40 12 Northern California that are likely to have relevant evidence  
09:40 13 stored there. For instance, the senior person associated with  
09:40 14 Jenam, who we just discussed, he's located in Northern  
09:40 15 California. He was involved in the prosecution of the  
09:40 16 patents-in-suit, the drafting of infringement notices related  
09:40 17 to the patents-in-suit and the licensing of the patents.

09:41 18 And the company that Jenam licensed its patents to and  
09:41 19 authorized the grant of sublicenses to is located in Northern  
09:41 20 California. And we believe that they will have evidence  
09:41 21 relevant to liability and damages.

09:41 22 In addition, Google plans to subpoena Cisco Systems  
09:41 23 because it has prior system art that we contend invalidates  
09:41 24 Jenam's patents. And Cisco is also headquartered in Northern  
09:41 25 California.



09:41 1           Conversely, there are no Google QUIC documents that are  
09:41 2 created, maintained or stored electronically in the Western  
09:41 3 District of Texas, as there are no data centers in the Western  
09:41 4 District of Texas, nor are there any Google employees working  
09:41 5 on QUIC in Texas.

09:41 6           Jenam has not alleged that it or any third parties possess  
09:41 7 any evidence in the Western District of Texas. So under the  
09:41 8 relevant case law, this factor necessarily weighs heavily in  
09:41 9 favor of transfer.

09:41 10          Turning to the fourth private interest factor, all other  
09:42 11 practical problems. This factor is neutral where, as is the  
09:42 12 case here, the suit is in its earliest stages. All that has  
09:42 13 occurred in this case is the service of infringement  
09:42 14 contentions, no discovery has occurred, other than venue  
09:42 15 discovery, and no case schedule has been entered.

09:42 16          This is only the second time that counsel has appeared  
09:42 17 before your Court, and the Court has not had to engage in any  
09:42 18 substantive analysis of the case to date. So matters of  
09:42 19 judicial economy are not a concern. And whatever has been done  
09:42 20 on the infringement contention front will of course carry over  
09:42 21 to the transferee Court, so there's no prejudice to Jenam.

09:42 22          I'd like to turn to the public interest factors now,  
09:42 23 unless Your Honor has any questions at this time.

09:42 24          Okay. So the first public interest factor I'd like to  
09:42 25 discuss is Court congestion. The Federal Circuit has recently

09:42 1 held in In Re Adobe that there is not an appreciable difference  
09:42 2 in court congestion between the Northern District of California  
09:42 3 and the Western District of Texas.

09:43 4 Jenam does not claim that any of these statistics have  
09:43 5 changed since the Federal Circuit's decision. And as Google  
09:43 6 lays out in its briefing, the two forums have a similar number  
09:43 7 of pending cases, similar number of pending patent cases and  
09:43 8 similar meeting time to trial in civil cases generally, as well  
09:43 9 as patent cases specifically. Your Honor, this continues to be  
09:43 10 true.

09:43 11 And, in fact, the Northern District of California is open  
09:43 12 and holding in-person jury trials despite the COVID-19  
09:43 13 pandemic. For instance, Judge Freeman is currently conducting  
09:43 14 an in-person jury trial in the San Jose Courthouse that my firm  
09:43 15 happens to be involved in. And if you go to the Court's  
09:43 16 website, you'll see her calendar has a jury schedule trial --  
09:43 17 jury trial scheduled --

09:43 18 THE COURT: I know Judge Freeman well. I can't think of  
09:43 19 anyone I would rather be compared to than Judge Freeman, though  
09:43 20 I don't think she relishes that comparison. But it seems to me  
09:43 21 that the point you're making here is actually -- my sense of  
09:43 22 it -- correct me if I'm wrong. My sense of it is that she's  
09:44 23 sort of an outlier in her district in terms of having trials.  
09:44 24 It's not that everyone in the Northern District -- or any of  
09:44 25 the California districts are opening up, rather, it's that

09:44 1 Judge Freeman is a bit of a trailblazer, which doesn't surprise  
09:44 2 me, by being willing to have a trial. That's my sense out here  
09:44 3 in Texas.

09:44 4 MS. OLM: Actually, Your Honor, the other two courthouses  
09:44 5 are both open for jury trials as well. There's one that's  
09:44 6 beginning in the Oakland courthouse today before Judge White,  
09:44 7 and Judge Alsop has a jury trial scheduled for the beginning of  
09:44 8 next week in the San Francisco courthouse.

09:44 9 So we are -- we're back up and running, mostly vaccinated,  
09:44 10 everyone's ready to get going.

09:44 11 THE COURT: That's good intel. I appreciate it.

09:44 12 MS. OLM: Yes, Your Honor.

09:44 13 Turning to the second public interest factor, the local  
09:44 14 interest and having localized interest decided at home.  
09:45 15 Google's work and reputation has been called into question.  
09:45 16 And many of the Google employees who created and managed  
09:45 17 Google's implementation of the QUIC protocol are in the  
09:45 18 Northern District of California. None are in the Western  
09:45 19 District of Texas.

09:45 20 Although Google does have some employees in the Western  
09:45 21 District of Texas, its employees in Austin comprise less than  
09:45 22 2 percent of Google's United States workforce. And more  
09:45 23 importantly, there's no relevant factual connection between the  
09:45 24 events and the Western District of Texas as required by the  
09:45 25 case law for a local interest to exist.

09:45 1 And in addition to the current and former Google employees  
09:45 2 who are located in Northern California, there's also  
09:45 3 Dr. Iyengar we discussed previously who's the co-editor of the  
09:45 4 Internet Engineering Task Force's version of the QUIC protocol.  
09:45 5 And Jenam is also alleging that the IETF's QUIC protocol  
09:45 6 infringes its patents.

09:45 7 Further, Jenam's connection to the Western District of  
09:45 8 Texas is nonexistent. It has no offices, no employees and no  
09:46 9 witnesses located here. And the patent -- inventor of the  
09:46 10 patents-in-suit also has no ties to Texas. Therefore, this  
09:46 11 factor weighs in favor of transfer.

09:46 12 Your Honor, in sum, with five factors substantially  
09:46 13 favoring transfer, three factors being neutral and nothing on  
09:46 14 the other side of the ledger supporting keeping these cases in  
09:46 15 the Western District of Texas, the Northern District of  
09:46 16 California is clearly a more convenient venue, and existing  
09:46 17 precedent supports this case being transferred.

09:46 18 At this point, Your Honor, I'm happy to address any  
09:46 19 specific questions Your Honor has.

09:46 20 THE COURT: I think I followed your argument.

09:46 21 I'll hear from counsel for plaintiff.

09:46 22 MR. DAHLGREN: Good morning, Your Honor.

09:46 23 I would like to start, I guess, addressing a few points  
09:46 24 that were raised by Ms. Olm. And I guess -- the question was  
09:47 25 about QUIC that -- sorry. Let me switch gears.

09:47 1 So the first thing I want to talk about is the ease of  
09:47 2 access to sources of proof. The precedent states that it's the  
09:47 3 location even with electronic documents, which I think -- you  
09:47 4 know, the majority of people may think is outdated, but it's  
09:47 5 still the law at this point.

09:47 6 And Google has never said that they have their electronic  
09:47 7 documents that their distributed teams use and collaborate  
09:47 8 with, that they're stored in the Northern District of  
09:47 9 California. They only raised these local copies and hard  
09:47 10 copies in the reply. And our opinion is that those might be  
09:47 11 outdated, it might be incorrect.

09:47 12 THE COURT: Mr Dahlgren, I'll tell you, I've done a lot of  
09:48 13 these. I'm not very persuaded by that aspect of -- there are  
09:48 14 several things Ms. Olm said I thought were very compelling.  
09:48 15 The location of documents in 2021 is not one I'm overly  
09:48 16 concerned about.

09:48 17 What I -- if I were you, what I'd really focus on was  
09:48 18 that -- the number of people who are in the Northern District  
09:48 19 of California. That's one big issue. And the second would be  
09:48 20 any ties this case has to our district.

09:48 21 MR. DAHLGREN: Sure. Thank you, Your Honor. I appreciate  
09:48 22 that guidance.

09:48 23 With respect to the availability of compulsory process,  
09:48 24 Google has not shown that its five alleged third-party  
09:48 25 witnesses are unwilling to testify in the Western District of

09:48 1 Texas. For one, Dr. Iyengar that was mentioned before, his  
09:48 2 declaration only states that he is likely unwilling to testify.  
09:49 3 And speculative statements like that can be -- or are  
09:49 4 considered insufficient.

09:49 5 Google identified a number of prior art's witnesses  
09:49 6 related to some Cisco products, and they relied on the fact  
09:49 7 that Cisco was headquartered in the Northern District of  
09:49 8 California. But Cisco also has an office in Austin, and we  
09:49 9 identified a number of individuals that apparently had  
09:49 10 equivalent knowledge regarding the alleged prior art.

09:49 11 Another issue we had is Google never specified which  
09:49 12 witnesses are most knowledgeable and what they possessed --  
09:49 13 these third-party witnesses possess that current employees  
09:49 14 don't. We identified Mr. Ian Swett and Ms. Alyssa Wilk. They  
09:49 15 have both worked on QUIC for at least a decade. I think Alyssa  
09:50 16 Wilk was -- back in 2008 she started at Google. So they were  
09:50 17 involved in the beginning.

09:50 18 And the individual -- I believe its -- it sounds like its  
09:50 19 sole individual that's employed by Google now in the Northern  
09:50 20 District of California, the technical lead and liaison with the  
09:50 21 IETF, he has only been with Google for a couple years. And so  
09:50 22 it's our opinion that he is less likely to have, you know,  
09:50 23 relevant knowledge.

09:50 24 And there's also numerous third parties that we've  
09:50 25 identified in the Western District of Texas that would be

09:50 1 subject to the Court's subpoena power. This includes Cisco,  
09:50 2 Fastly, which -- that's where Dr. Iyengar currently works --  
09:50 3 and Mozilla, Cloudflare and then a couple individuals. Yixin  
09:51 4 Wang was a former Google employee who worked on QUIC, and he's  
09:51 5 in the Dallas area. And then Hajime Fujita, who is a technical  
09:51 6 person at Fastly that has worked with QUIC.

09:51 7 So there are a number of third parties in this district  
09:51 8 that, if the case was transferred, you know, some would  
09:51 9 potentially not be within subpoena power.

09:51 10 And there's also the issue of Mirai Ventures, LLC. It is  
09:51 11 a CUTMA account that was created. It's managed by Patrick  
09:51 12 Caldwell, the prosecuting attorney. So he has dual roles in  
09:51 13 this case. We don't believe that the Mirai issues are  
09:51 14 necessarily relevant, but Google has made a big point of  
09:52 15 pursuing that.

09:52 16 With respect to willing witnesses, again, Google hasn't  
09:52 17 shown that it would be unduly burdensome to testify to have a  
09:52 18 trial in Waco. And when Ms. Olm said that we don't have any  
09:52 19 employees currently in the Western District of Texas, we  
09:52 20 mention in our briefing that we were in a bit of a conundrum.  
09:52 21 Google has essentially got a stamp of approval from the Federal  
09:52 22 Circuit that they're not subject to venue in the Eastern  
09:52 23 District of Texas, and that is our home forum. And so we were  
09:52 24 forced to make a choice of where to sue.

09:52 25 And for convenience and also your order regarding the

09:53 1 proceedings and you run cases efficiently, we chose the Western  
09:53 2 District of Texas. We have both Patrick Caldwell and then the  
09:53 3 client, Mr. Gordon, who are located reasonably close to Waco.

09:53 4 Now, Mr. Morris, you know, who's in Georgia, he has  
09:53 5 indicated that his preferred mode of transportation is driving.  
09:53 6 I believe it's approximately 900 miles from Georgia to Waco,  
09:53 7 and it's about 2600 miles to go to San Francisco. And I think  
09:53 8 that's a substantial difference. And I understand that there's  
09:53 9 case law stating that when people have to travel long  
09:53 10 distances, it's kind of a wash, if you will, but I think that  
09:53 11 this situation differs.

09:53 12 And again, transferring the case, it would be a burden on  
09:54 13 Mr. Caldwell as well. I think that trip is about 1700 miles,  
09:54 14 interfere with his work.

09:54 15 And we have Mr. Zilka that was mentioned by Ms. Olm, who  
09:54 16 has agreed to attend trial or testify at a hearing in Waco.  
09:54 17 But I think that that kind of moots the concern, at least with  
09:54 18 respect to that potential third-party witness.

09:54 19 And to clarify, he is not part of Jenam. He's not  
09:54 20 affiliated with Jenam. Jenam retained him as an attorney in  
09:54 21 2014, and he's still functioning in that role. He does assist  
09:54 22 with prosecution. He reviewed some notice letters. He did not  
09:54 23 draft them, just to clarify that point. And he's done other  
09:54 24 kind of this legal counseling for Jenam on -- from time to  
09:55 25 time.



09:55 1 But, you know, Google's argument that, you know, Oso-IP  
09:55 2 and Kevin Zilka are secretly running Jenam in this litigation  
09:55 3 are just not true. But again, it's all a moot point because  
09:55 4 he's agreed to come to Waco.

09:55 5 Now, the development of QUIC, Ms. Olm said that about -- I  
09:55 6 believe, that 40 percent of the employees working on it are in  
09:55 7 the Northern District of California. The information that  
09:55 8 we've provided that we've gleaned from the public records seems  
09:55 9 to indicate that most of the work actually happened in  
09:55 10 Cambridge, Massachusetts. And now that there's only, I  
09:55 11 believe, a single employee who is working out of Northern  
09:55 12 District of California for Google on QUIC, those Massachusetts  
09:55 13 employees seem irrelevant.

09:55 14 And that's also where Mr. Swett and Ms. Wilk are located.  
09:56 15 And those are two individuals we identified that have  
09:56 16 substantial experience over a long period of time, longer than  
09:56 17 Dr. Iyengar or the other people that Google has identified,  
09:56 18 like Jim Roskind and all those people.

09:56 19 So it's our opinion that they'd probably be more likely  
09:56 20 witnesses. And that's kind of an issue that we have here.  
09:56 21 This is a situation where it's a great information disparity.  
09:56 22 We have tried to get a brief summary of the individuals and  
09:56 23 their roles with respect to QUIC and, you know, job  
09:56 24 responsibilities, and Google has refused to provide that.

09:56 25 And so we're really left in the dark and just have to look

09:56 1 at public information to try to find out who the relevant  
09:56 2 people are. We have sought that discovery, and I'm happy to  
09:57 3 talk about that in more detail. But without this information,  
09:57 4 essentially Google's free to select whoever they want and do so  
09:57 5 that would be favorable for transfer.

09:57 6 In terms of judicial economy and other practical problems,  
09:57 7 Google received our infringement contentions in August of 2020.  
09:57 8 They have not provided any invalidity contentions. If the case  
09:57 9 is transferred, they'll have many more months to develop  
09:57 10 invalidity defenses and noninfringement positions, and that's  
09:57 11 prejudicial to Jenam.

09:57 12 And we've expended significant efforts to prepare this  
09:57 13 case. Initially, if you recall, Your Honor, we had over, I  
09:57 14 think, around 400 claims. We dropped that down to 65. And  
09:57 15 then we addressed all the deficiencies that Google identified.

09:58 16 Now, one other new development, Your Honor, I just want to  
09:58 17 mention, there was a new patent that's related to the -- it's  
09:58 18 in the same family as the patents in this lawsuit. It issued,  
09:58 19 and we did file another complaint. So there's a second related  
09:58 20 action that's going to have, I think, substantial overlap in  
09:58 21 terms of the underlying technology and some of the claim terms,  
09:58 22 for example. And that is -- that'd be another reason to not  
09:58 23 transfer the case.

09:58 24 That second case, Google has taken the position that the  
09:58 25 relevant time period is the filing of the complaint. And if

09:58 1 that's the case, the situation has changed, I think, somewhat  
09:58 2 substantially since we filed this initial lawsuit last year,  
09:58 3 and that includes the Midlothian data center.

09:59 4 I believe Ms. Olm said there's no data centers in Texas,  
09:59 5 but information that we've found that's publicly available  
09:59 6 indicates that it's at least partially operational. And that's  
09:59 7 another category of information that Google has refused to  
09:59 8 provide, I think, necessary discovery on, so we understand what  
09:59 9 its function is and what it's doing. And that's in -- it's  
09:59 10 within the subpoena power of the -- of the Court.

09:59 11 Now, some of the -- the other witnesses that Ms. Olm  
09:59 12 identified, the third-party witnesses, you know, she cited  
09:59 13 that, you know, the fact that they were authors on papers that  
09:59 14 related to QUIC, but there were multiple, multiple authors.  
09:59 15 And so just being listed on an article doesn't necessarily make  
09:59 16 them the most knowledgeable or relevant witness in this matter.

10:00 17 So I think there's, you know, really, at a basic level, a  
10:00 18 failure of -- of proof, you know, one, with the -- with the  
10:00 19 location of documents, which I understand that you think  
10:00 20 shouldn't be given too much weight, but also with identifying  
10:00 21 the relevant third-party witnesses, identifying relevant party  
10:00 22 witnesses. It's challenging without having adequate discovery  
10:00 23 for us to respond to that.

10:00 24 One second. Trying to go through my notes just to address  
10:00 25 some of the points that Ms. Olm made.

10:00 1 With regard to the inventor, Mr. Morris, Ms. Olm stated  
10:00 2 that he was unwilling to -- to testify, but he stated in his  
10:00 3 declaration that he was unwilling to testify during the COVID  
10:00 4 pandemic. I've spoken with him, and he is willing to testify  
10:01 5 by the time there's a trial in the Western District of Texas.

10:01 6 THE COURT: So your representation to the Court is that  
10:01 7 the inventor would be willing to come to Waco in person?

10:01 8 MR. DAHLGREN: Yes. Yes. Yes, Your Honor. Yeah. The --  
10:01 9 the inventor is willing to -- to travel to Waco, and it's  
10:01 10 substantially a shorter distance for him, particularly driving.

10:01 11 THE COURT: Understood.

10:01 12 MR. DAHLGREN: With respect to, you know, Court  
10:01 13 congestion, Google, when they calculated the number of cases,  
10:01 14 combined the MDL cases to essentially reduce the number. But  
10:01 15 when you don't do that, the number is actually about four -- I  
10:01 16 think 4,000 cases higher than in the Western District of Texas.

10:02 17 And, Your Honor, your -- your process for handling cases,  
10:02 18 you handle Markman, you know, sooner than a typical case in the  
10:02 19 Northern District of California, fact discovery begins after  
10:02 20 Markman, and we believe that that's a more efficient way to  
10:02 21 adjudicate this case for the -- for the parties and for Your  
10:02 22 Honor.

10:02 23 Now, with respect to local interest, again, Jenam is in a  
10:02 24 bit of a conundrum because it is an Eastern District of Texas  
10:02 25 entity, that's where it's located, but not being able to bring

10:02 1 suit there, you know, we're still, I guess, neighbors, if you  
10:02 2 will, to the Western District of Texas. And I think that  
10:02 3 should be afforded some weight.

10:02 4 Mr. Gordon, the client, is, you know, very involved in the  
10:02 5 community. And also, Google's activities, I think, create a  
10:02 6 substantial local interest in Austin and the Western District  
10:03 7 of Texas as well.

10:03 8 And so if -- if -- so, well, taking a step back. So  
10:03 9 Google has not provided information beyond what's publicly  
10:03 10 available that the activities occur in Austin, but publicly  
10:03 11 available information indicates that there is engineering work  
10:03 12 on a number of the accused products and that they also focus on  
10:03 13 marketing and finance.

10:03 14 That latter part is -- is actually a big issue for us.  
10:03 15 Google, so far, has only identified technical information and  
10:03 16 technical people. But with respect to damages and objective  
10:03 17 indicia of nonobviousness, the financial people, the marketing  
10:03 18 people would have relevant information.

10:03 19 Google cited in its -- its reply that there are far more  
10:03 20 in the Northern District of California and cited to the Harrell  
10:03 21 declaration. But when you read the Harrell declaration, it  
10:04 22 just simply doesn't say that.

10:04 23 And Austin, I believe, is one of the few Google offices  
10:04 24 that has people that, you know, are dedicated to nonengineering  
10:04 25 work, such as, you know, marketing and finance. And again, our

10:04 1 position, that's relevant.

10:04 2 And we have asked for information sufficient to identify  
10:04 3 people most knowledgeable about sales, marketing and financial  
10:04 4 activities related to the accused products in the Western  
10:04 5 District, and Google has so far refused to provide that. So  
10:04 6 that's another one of the discovery disputes.

10:04 7 And just going back to, you know, Google's local interest.  
10:04 8 You know, they have been calling Texas homes for over a  
10:04 9 decade -- well over a decade. They have spent millions of  
10:04 10 dollars leasing space and -- and building the Midlothian data  
10:05 11 center.

10:05 12 And QUIC itself is not a -- a discrete product on its own.  
10:05 13 It's important to understand that it's something that's used  
10:05 14 across all of Google's products, as -- as far as we know.

10:05 15 And so all the activities that are occurring in the  
10:05 16 Western District of Texas involve -- involve infringement. And  
10:05 17 so I -- again, I think that supports there being a local  
10:05 18 interest in the Western District of Texas. And at a minimum, I  
10:05 19 believe that factor would be neutral.

10:05 20 Now, the last thing I just wanted to touch on, Ms. Olm  
10:05 21 mentioned the IETF version of QUIC and then Google QUIC. I'll  
10:05 22 refer to the latter as G-QUIC. But they have been working to  
10:06 23 kind of come together. When they first started off, they kind  
10:06 24 of split and did things a little bit differently. But now  
10:06 25 they're working on, you know, compatibility issues. And my

10:06 1 understanding is that they're going to implement fully the IETF  
10:06 2 version of QUIC around the end of this year, or September, I  
10:06 3 believe, was the last date that -- that I saw.

10:06 4 And so the idea that these, you know, IETF individuals,  
10:06 5 like Dr. Iyengar, are necessary witnesses. Again, I don't  
10:06 6 think that's necessary to the case, given the current employees  
10:06 7 at Google, the fact that they're adopting that standard and the  
10:06 8 fact that they have been working at Google and on QUIC for  
10:06 9 longer periods of time than the individuals that Ms. Olm  
10:06 10 identified.

10:06 11 So, Your Honor, we believe that the, you know, conflict of  
10:07 12 laws and -- and familiarity of the law factors are -- are  
10:07 13 neutral, so we're not, you know, contesting that. If you have  
10:07 14 any questions on any specific factors, I'm happy to address  
10:07 15 them.

10:07 16 THE COURT: No. I thought that was quite good. If you  
10:07 17 all will give me just a one-minute break, I need to check  
10:07 18 something with my clerk and I'll be right back on board. So  
10:07 19 just give me a second.

10:07 20 (Pause in proceedings.)

10:08 21 THE COURT: Let's -- just something hit me. I just wanted  
10:08 22 to take a break, but let me hear from plaintiff real -- for  
10:08 23 just a second. I'm more interested on this one question and  
10:08 24 your answer probably than Google's.

10:08 25 You mentioned that there's a new complaint that's been

10:08 1 filed; is that right?

10:08 2 MR. DAHLGREN: That's correct.

10:08 3 THE COURT: Okay. Is -- for purposes of any decision that  
10:08 4 was made, would the plaintiff have an objection to combining  
10:09 5 the patent in the current -- the case that just got filed with  
10:09 6 the patents that are in these other cases, or does the  
10:09 7 plaintiff see this as two distinct lawsuits that would require  
10:09 8 different trials?

10:09 9 MR. DAHLGREN: I think that given the fact that we have  
10:09 10 been dealing with venue pretty much exclusively in the prior  
10:09 11 litigation that both cases could be consolidated and -- and run  
10:09 12 together. I would say that the -- you know, the transfer  
10:09 13 analysis for the -- the latter case would differ just based on  
10:09 14 the timing. But in terms of if it wasn't transferred, then  
10:09 15 yes. I think both cases could be on the same track and have  
10:09 16 the same trial.

10:09 17 THE COURT: With -- with the latter trial date?

10:09 18 MR. DAHLGREN: With the -- yeah. With the trial date that  
10:09 19 would be set by the Court. I apologize. I don't recall if we  
10:09 20 had set a schedule because of the ongoing venue stuff, but I  
10:09 21 think that the new case could certainly go along with the --  
10:10 22 the previous one. And we could do --

10:10 23 THE COURT: Well, let me make clear what I'm saying, is --  
10:10 24 let's assume we -- forget the first case for a second, the one  
10:10 25 we were discussing. I'm just thinking about the one you just



10:10 1 filed. Let's say that it was filed whenever and we're going to  
10:10 2 set it roughly, again, rough numbers, 24 months after these --  
10:10 3 the most recent case was filed by you all, would the plaintiff  
10:10 4 have any objection to the schedule for the case that we're  
10:10 5 discussing right now being delayed and taken up with -- and  
10:10 6 getting the later trial date?

10:10 7 MR. DAHLGREN: Your Honor, if that -- if that would be  
10:10 8 your preference, I believe that that would be fine with us. We  
10:10 9 do think we could speed it up, but yes. That would be fine  
10:10 10 too.

10:10 11 THE COURT: Okay. So I'll be back, and then I'm --  
10:10 12 Ms. Olm, I'm obviously going to give you a chance, just there's  
10:11 13 something I want to ask my law clerk and clear it before and so  
10:11 14 I'm ready for you. But I'll be back in just a minute.

10:13 15 (Pause in proceedings.)

10:16 16 THE COURT: Thank you for that break. Ms. Olm, I'm happy  
10:17 17 to go back on the record and hear your response.

10:17 18 MS. OLM: Thank you, Your Honor. I'd like to address just  
10:17 19 a few points that opposing counsel made.

10:17 20 First, as to the third-party witnesses, Google has  
10:17 21 provided a declaration from Dr. Iyengar stating that he's  
10:17 22 likely unwilling to testify. And although we haven't provided  
10:17 23 declarations -- we -- we haven't reached out to the other  
10:17 24 witnesses that we've identified, it's clear that it's going to  
10:17 25 be more convenient for them to testify at home in Northern

10:17 1 California. And there's no indication that they would be  
10:18 2 willing to travel to Waco.

10:18 3 As to the companies that opposing counsel mentioned in his  
10:18 4 response, Cisco, Fastly, Mozilla, all of these companies, Derek  
10:18 5 points out that -- opposing counsel points out that these  
10:18 6 companies work on the QUIC protocol, but it's not clear how  
10:18 7 that has any relevance to this case. They don't explain why  
10:18 8 these companies would have relevant information. And also, the  
10:18 9 vast majority of these companies are headquartered in Northern  
10:18 10 California. So it's entirely unclear how this would -- how --  
10:18 11 weigh in favor of keeping the case in Waco.

10:18 12 As to the two individuals that opposing counsel mentioned,  
10:18 13 Yixin Wang, the former Google employee, he was at Google for  
10:18 14 less than two years. He left Google three years ago, and he  
10:18 15 doesn't reside in the Western District of Texas. And again,  
10:18 16 Jenam provides no indication as to what relevant information he  
10:18 17 has.

10:18 18 And then as to the other person they mentioned, Hajime  
10:18 19 Fujita, that person is -- there's no evidence in the record at  
10:19 20 all as to what information this person possesses, there's no  
10:19 21 LinkedIn profile provided, no nothing. The briefing doesn't  
10:19 22 have any mention of what information he possesses or who this  
10:19 23 individual is.

10:19 24 And on the other hand, the witnesses that we've  
10:19 25 identified, they're directly relevant to articles that Jenam

1 cites in its infringement contentions and the Internet  
2 Engineering Task Force. And I think we've explained in detail  
3 why they are relevant, and Jenam hasn't meaningfully contested  
4 that.

5 As to why Dr. Iyengar, who's a co-editor of the IETF  
6 specification would be relevant, I would point out that several  
7 of the features that -- in QUIC that Jenam has accused in its  
8 infringement contentions are optional in the IETF's version of  
9 the QUIC protocol.

10 For example, the current draft of the IETF QUIC standard  
11 states that the idle time-out feature is optional, and idle  
12 time-out is one of the major features accused by Jenam in its  
13 infringement contentions. So this is example of a highly  
14 relevant feature that's accused by Jenam and optional in the  
15 standard. And again, it's what's going to be -- we believe  
16 Dr. Iyengar will have information relevant to damages and be  
17 able to speak as to why the accused functionalities aren't  
18 of -- aren't particularly important to the protocol.

19 So as to the willing witnesses, part of opposing counsel's  
20 argument was that Jenam believes that Ian Swett will have  
21 relevant testimony. Ian Swett is a managerial technical lead  
22 in Cambridge, Massachusetts, and there's evidence in the  
23 record, in the Harrell declaration provided with our opening  
24 brief, that states that Ian Swett would prefer to testify in  
25 the Northern District of California than Waco.

1           It would be more convenient for him because the QUIC team  
2 is -- part of it is located in Northern California. He  
3 frequently travels to San Francisco, again, where Google's  
4 headquartered, whereas he doesn't have any reason to travel to  
5 Texas. And so he's -- again, we provided evidence that it  
6 would be more convenient for him to testify there. So it's  
7 unclear why opposing counsel believes that his location in  
8 Cambridge weighs in favor of keeping the case in Waco.

9           Similarly, the employee Alyssa Wilk, also. Presumably it  
10 would be more convenient for her to travel to the Northern  
11 District of California. Again, it's more common that these  
12 Cambridge employees travel to San Francisco for work.

13           And Google has identified numerous recent employees in the  
14 Northern District of California and has explained why these  
15 information -- why these people have relevant testimony.  
16 Again, one of the two technical leads is in Northern  
17 California, and this person also works -- is the person who's  
18 primarily responsible at Google for working with the IETF on  
19 the standardized QUIC protocol, which opposing counsel admits  
20 is relevant and he also manages, again, the website materials  
21 that Jenam relies on heavily in its infringement contentions.

22           So it's -- it's -- he is going -- very likely going to be  
23 a trial witness, and he's located in Northern California, as  
24 are recent members of the QUIC team. Again, at the operative  
25 point in time, half of the QUIC team was in Northern

10:22 1 California, and those people still remain in Northern  
10:22 2 California.

10:22 3 And although Jenam claims that we haven't provided  
10:22 4 information about the roles that these various employees have,  
10:22 5 we did offer to identify who the managerial leads are and who  
10:22 6 the technical leads are, and we did so -- we did do so. And we  
10:22 7 also explained in our discovery responses, in detail, the  
10:22 8 composition of the current QUIC team, and Jenam has never  
10:22 9 really explained what other information it seeks.

10:22 10 And you can look at Google's discovery responses. It's at  
10:22 11 Docket No. 58-2, and you'll see the detailed information we  
10:22 12 provide about the composition of Google's QUIC team.

10:22 13 There is no evidence that the majority of the work has  
10:22 14 been done in Cambridge. In Jenam's motion to compel briefing,  
10:23 15 they pointed to some random Google employees in Massachusetts;  
10:23 16 but as we explained in our -- in our motion to compel briefing,  
10:23 17 there's no evidence that these people have worked on QUIC, and  
10:23 18 we've attested to the fact that they haven't, the various  
10:23 19 people that Jenam's identified. And so that is just not the  
10:23 20 case.

10:23 21 As to Mr. Morris, the inventor, there is no evidence in  
10:23 22 the record that he's willing to testify in the Western District  
10:23 23 of Texas. His declaration states, "If required to testify as a  
10:23 24 witness in this matter, it would be far more convenient for me  
10:23 25 to testify using remote means of communication."

10:23 1 So again, there's no evidence in the record that Morris --  
10:23 2 Mr. Morris would be willing to travel to either venue. And so  
10:23 3 his -- his location shouldn't be considered under the willing  
10:23 4 witnesses factor.

10:23 5 As to the practical problems Jenam alluded to, Jenam did  
10:23 6 not narrow its claims until December 2020. And they've only  
10:24 7 recently, in the past few months, provided revised infringement  
10:24 8 contentions, and they have not addressed all the deficiencies  
10:24 9 that Google has identified as they claim. So we -- we do not  
10:24 10 think that there's any prejudice there.

10:24 11 We'd also note that although we maybe had the infringement  
10:24 12 contentions for a few months, Jenam had unlimited time to  
10:24 13 develop the infringement contentions because they chose when  
10:24 14 they filed this case. So, again, I don't think it's  
10:24 15 prejudicial that we've had some -- just a few months to work on  
10:24 16 our invalidity contentions.

10:24 17 As to the new action with the single patent that's just a  
10:24 18 trail off of the eight patents that are in this lawsuit, Jenam  
10:24 19 filed that action before it filed its motion to transfer  
10:24 20 opposition brief and its motion to transfer sur-reply, and it  
10:24 21 never raised a concern that this new action would have an  
10:24 22 impact on the practical problems factor.

10:24 23 So we agree that there's no prejudice, and we also agree  
10:24 24 that, as you pointed out earlier, that there's a -- although I  
10:24 25 would need to check with our client, Google would likely be

10:25 1 fine with consolidation as well and also the delayed brief --  
10:25 2 the delayed schedule based on the second patent's filing date.

10:25 3 As to the local interest, Google's activities in Austin  
10:25 4 are primarily around three areas: One, recruiting; two, cloud  
10:25 5 sales; and, three, engineering unrelated to the QUIC protocol.

10:25 6 Although there might be some work on -- Jenam claims that  
10:25 7 there is financial and marketing and sales personnel in the  
10:25 8 Western District of Texas. But again, there -- we -- there's  
10:25 9 only, as far as I'm aware, there's only maybe someone who works  
10:25 10 on cloud sales. But cloud is just one of the 81 accused  
10:25 11 products in that -- in this case, and there's no evidence that  
10:25 12 there's anybody in the Western District of Texas with any  
10:25 13 specialized knowledge as to financial sales or marketing.

10:25 14 Google also works on cloud in its Northern District of  
10:25 15 California offices. And again, there's far more people in  
10:26 16 Google's headquarters. Over 60 percent of Google's workforce  
10:26 17 is in the Northern -- is in Northern California, whereas less  
10:26 18 than 2 percent are in Waco. And there's just no evidence that  
10:26 19 the Austin office will have any specialized knowledge as to any  
10:26 20 of the accused products.

10:26 21 And as we've declared many times, there's no -- no persons  
10:26 22 who work on QUIC or have specialized knowledge about QUIC  
10:26 23 within the State of Texas.

10:26 24 If Your Honor has any other questions, I'm happy to  
10:26 25 address them at this time. I can --

10:26 1 THE COURT: I don't. Any response from plaintiff?

10:26 2 MR. DAHLGREN: Yes, Your Honor. And I apologize. My  
10:26 3 video has apparently gone out. Can you -- can you hear me?

10:26 4 THE COURT: I can. I was wondering. I was watching. You  
10:26 5 were talking, and I could hear you great, but your face was not  
10:26 6 moving. I -- I asked one of my law clerks. That's -- I need  
10:26 7 to get one of those screens for myself so I look, you know, I  
10:26 8 look like I'm there and I keep talking but no one can see me.  
10:26 9 That's a -- that would be a great improvement for everyone if  
10:27 10 they didn't have to look at me, so...

10:27 11 But yes. I can hear you just fine. Thank you.

10:27 12 MR. DAHLGREN: Okay. Good.

10:27 13 You know, just a few things to point out. You know,  
10:27 14 again, this is a case where there's a lot of information  
10:27 15 disparity. Opposing counsel mentioned marketing people not  
10:27 16 having specialized knowledge of QUIC, but it's not surprising  
10:27 17 because QUIC is not a discrete product. That does not mean  
10:27 18 that they're not relevant with respect to the accused products  
10:27 19 that utilize QUIC.

10:27 20 And again, all reasonable inferences should be drawn in  
10:27 21 favor of the nonmovant, and that would help address this  
10:27 22 information disparity.

10:27 23 Now, there are a couple of other just -- I want to say  
10:27 24 failure of -- failure of proof. To have -- for the compulsory  
10:27 25 process for unwilling witnesses, you have to demonstrate that



10:27 1 they're unwilling. And Google at -- you know, at best,  
10:27 2 indicated Dr. Iyengar was unlikely to -- to testify, and that's  
10:28 3 speculative.

10:28 4 Now, again, I understand your position on the -- the  
10:28 5 documents. But again, Google never identified the location of  
10:28 6 those documents, and they never provided any nontechnical  
10:28 7 documents either or even identified where those nontechnical  
10:28 8 documents would be.

10:28 9 Now, for the convenience of the witnesses, I understand  
10:28 10 that Mr. Swett stated a preference for going to San Francisco,  
10:28 11 but all these witnesses could testify remotely, is one option.  
10:28 12 I know courts have become more receptive to that.

10:28 13 And also, there's ample office space in Austin that Google  
10:28 14 has where they could, you know, work during their free time and  
10:28 15 not have -- not waste -- not waste a bunch of time, not have it  
10:28 16 be such a burden on them.

10:28 17 And just a few more points, Your Honor, I want to address  
10:29 18 about, you know, Mr. Morris the inventor. He said he was  
10:29 19 unwilling to testify, you know, in person in either forum  
10:29 20 during the -- the COVID pandemic. It's not just he's  
10:29 21 unwilling, period. And hopefully now with the vaccines and  
10:29 22 it's winding down, that won't be an issue.

10:29 23 And he has agreed in the interim for, you know,  
10:29 24 depositions, to do so remotely, which has been -- every depo  
10:29 25 I've taken so far during COVID has been remotely.

10:29 1 Now, with the infringement contentions, you know, our  
10:29 2 understanding was we addressed all the deficiencies. We've  
10:29 3 never heard from Google what additional deficiencies exist, but  
10:29 4 we were interested in, you know, moving the case forward and  
10:30 5 clarifying the accused products.

10:30 6 And again, there's just a complete absence of any sales  
10:30 7 and financial people or information, which, again, would be  
10:30 8 relevant to damages and objective indicia of nonobviousness,  
10:30 9 you know, among other issues.

10:30 10 And again, when -- I guess Ms. Olm stated that the Austin  
10:30 11 office, there's no indication that it was having any  
10:30 12 specialized functions. The public information, when they  
10:30 13 released a press release about opening the -- their offices  
10:30 14 there, they said that was going to be one of the few that would  
10:30 15 be dedicated to, you know, marketing and finance in part and  
10:30 16 also work on things like cloud, Android™, Google Play and a  
10:30 17 number of other accused products.

10:30 18 And so I do think that there are, you know, substantial  
10:30 19 ties between this -- this action and the activities that are  
10:31 20 going on in this district by Google.

10:31 21 And to the extent that there are employees out in the  
10:31 22 Northern District of California, again, we would, you know,  
10:31 23 probably do a remote deposition, go to them, and they could  
10:31 24 participate remotely, potentially, if there was a concern about  
10:31 25 traveling still.

10:31 1 And I guess -- just so I'll -- I'll just end it, again, by  
10:31 2 saying that I think Google just has not provided enough --  
10:31 3 enough evidence to demonstrate that the Northern District of  
10:31 4 California is clearly more convenient. We have, you know,  
10:31 5 multiple people close to your court. And it would be, I think,  
10:31 6 very burdensome for them to have to go to the Northern District  
10:31 7 of California. They don't have the -- quite the means that --  
10:31 8 that Google has.

10:31 9 So when Google says things are burdensome, I kind of take  
10:32 10 that with a grain of salt. And I don't mean that in a negative  
10:32 11 way, but just, you know, with their resources, I think that  
10:32 12 they would be better equipped to come to your courthouse, Your  
10:32 13 Honor, than vice versa. And -- and merely shifting the  
10:32 14 inconvenience from one party to another is -- is -- that's --  
10:32 15 that's not a basis for granting a transfer.

10:32 16 So unless you have any questions, I will -- oh, Your  
10:32 17 Honor, I was -- I was very remiss in the beginning. I wanted  
10:32 18 to introduce two people who are attending.

10:32 19 THE COURT: Okay.

10:32 20 MR. DAHLGREN: Our client, Mr. Andrew Gordon, is  
10:32 21 attending. And also the inventor, Mr. Paul Morris, is also  
10:32 22 attending.

10:32 23 THE COURT: Well, I want to take the time to thank them  
10:32 24 for attending. I don't remember Mr. Jones telling me whether  
10:32 25 or not folks from Google were on. But if they are attending, I

10:32 1 certainly appreciate their being here as well, probably --  
10:32 2 because it's earlier out where they are than where I am.

10:32 3 So I always very much appreciate it when in-house counsel  
10:33 4 or clients themselves actually take the time to attend and see  
10:33 5 how -- I'll go ahead and tell you that one of my favorite  
10:33 6 quotes, not exact quotes, but I listen to the Supreme Court  
10:33 7 arguments. Mr. Jones has heard me tell this story, I think.

10:33 8 During one of the arguments that was made, Justice Breyer,  
10:33 9 at the end of a hearing just like this said, the problem we  
10:33 10 have is that I listen to one side and I think they're right,  
10:33 11 and then I listen to the other side and I think they're right.  
10:33 12 And he said to one of the lawyers, what am I to do?

10:33 13 That was probably rhetorical. But these were both very  
10:33 14 good arguments, which you might think having not good arguments  
10:33 15 would make it -- the job easier. Having really good arguments  
10:33 16 makes it tougher. But we will -- we'll certainly get to work  
10:33 17 on this.

10:33 18 Is there anything else we need to take up with regard to  
10:33 19 the motion or anything else in the case?

10:33 20 I'll start with counsel for plaintiff.

10:34 21 MR. DAHLGREN: Your Honor, we did file a motion to compel.

10:34 22 THE COURT: Okay.

10:34 23 MR. DAHLGREN: If you want to address that, I'm prepared  
10:34 24 to do so. If you want to defer that for now, that's -- that's  
10:34 25 fine too. I just ask that if -- if the Court's inclined not

10:34 1 to -- or to -- to grant the transfer, we would appreciate the  
10:34 2 opportunity to at least present an argument as to why we need  
10:34 3 that additional information and how it could be dispositive  
10:34 4 and -- and show that the Western District of Texas is the  
10:34 5 proper forum.

10:34 6 THE COURT: I'll make that deal, which doesn't -- which  
10:34 7 shouldn't indicate that I've decided one way or the other. But  
10:34 8 certainly I'll get with my law clerk and we'll look at the  
10:34 9 motion to compel and determine whether or not we think the  
10:34 10 information that might be obtained in the motion to compel is  
10:34 11 such that it would have an impact on us. And if we think that  
10:34 12 it would and we need to have you all tell us either why you  
10:34 13 shouldn't have the information or why you're not entitled to  
10:34 14 it, we'll get another hearing set pretty quickly.

10:34 15 Other than that, for the plaintiff, is there anything else  
10:35 16 we need to take up?

10:35 17 MR. DAHLGREN: No, Your Honor. And I appreciate the --  
10:35 18 the opportunity to argue in front of you again. It's always a  
10:35 19 pleasure.

10:35 20 THE COURT: Always a pleasure.

10:35 21 Ms. Olm, I think this is the first time I've had you  
10:35 22 appear in front of me. I could be wrong. But I think you did  
10:35 23 an outstanding job for someone who, I think, it appears to me,  
10:35 24 looks to be relatively new to the bar. But everyone on this  
10:35 25 call appears to be much younger than me, so I'm always hesitant

10:35 1 to say that.

10:35 2 Is there anything else we can take up on behalf of Google?

10:35 3 MS. OLM: No, Your Honor. Nothing else from us. Thank  
10:35 4 you, though. It was -- it was great to have this opportunity  
10:35 5 to argue before you.

10:35 6 THE COURT: I look forward to hopefully seeing you in  
10:35 7 person in trial or something that we do here in Waco or Austin.  
10:35 8 Have a good day, everyone. And we'll get to work on this.  
10:35 9 Thank you.

10:35 10 (Hearing adjourned at 10:35 a.m.)

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1 UNITED STATES DISTRICT COURT )  
2 WESTERN DISTRICT OF TEXAS )  
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4 I, Kristie M. Davis, Official Court Reporter for the  
5 United States District Court, Western District of Texas, do  
6 certify that the foregoing is a correct transcript from the  
7 record of proceedings in the above-entitled matter.

8 I certify that the transcript fees and format comply with  
9 those prescribed by the Court and Judicial Conference of the  
10 United States.

11 Certified to by me this 6th day of May 2021.

12  
13 /s/ Kristie M. Davis  
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